

1 MR. DUNNE: The rules will show what is
2 exempt and nonexempt. This will show what his state of
3 mind was.

4 JUDGE STIRMER: All right. We'll -- I'll
5 receive it for the state of mind of the witness and his
6 conversation with Mrs. Christian.

7 MS. LADEN: We have no further objections to
8 this exhibit.

9 JUDGE STIRMER: Very well. All right.
10 Exhibit No. 2, with the rulings that I have made, will
11 be received.

12 (Whereupon, the document
13 marked for identification as
14 KOKS Exhibit No. 2 was
15 received into evidence.)

16 MR. DUNNE: Your Honor, before we go to
17 Exhibit No. 3, can we take a short break?

18 JUDGE STIRMER: Sure. All right. Why don't
19 we take a five-minute recess at this time.

20 MR. DUNNE: Thank you, Your Honor.

21 (Whereupon, a short break ensued.)

22 (Tape 2)

23 JUDGE STIRMER: Please be seated. Thank you.
24 On the record.

25 MR. DUNNE: Your Honor, Calvary at this time

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1 would like to offer Exhibit No. 3, the testimony of
2 Nina Stewart.

3 JUDGE STIRMER: Very well. Are there any
4 objections?

5 MS. LADEN: Your Honor, I believe there are.
6 I would like Mr. Shook to address the rest of our --
7 the rest of the exhibits and our exhibits, Your Honor.

8 JUDGE STIRMER: Very well.

9 MR. SHOOK: Your Honor, with respect to
10 paragraph 3, beginning with the fourth line, "but told
11 us that we would need to install what he called the A-1
12 Tower Lighting kit." The next sentence, "He said we
13 should do this because..." Now, if this is being
14 offered for state of mind, we have no difficulty with
15 it. If it's being offered for the truth of the matter
16 asserted, then we have a hearsay objection.

17 JUDGE STIRMER: Mr. Dunne, is it offered for
18 the state of mind?

19 MR. DUNNE: I, I believe, Your Honor, Mrs.
20 Stewart can testify of her own personal knowledge as to
21 the fact that the tower is in a heavily wooded area and
22 that it's not clearly visible. But for that particular
23 sentence, I think state of mind is -- it's offered for
24 the state of mind.

25 JUDGE STIRMER: All right.

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1 MR. SHOOK: Your Honor, I had skipped one
2 earlier by inadvertence. With respect to paragraph 2,
3 and it's also on page 2, beginning the fourth line
4 down, "Our consulting engineer told us..." through the
5 end of that sentence. Again, if that's being offered
6 for state of mind, we have no objection. If it's being
7 offered for the truth of the matter asserted, then we
8 do have a hearsay objection.

9 JUDGE STIRMER: Is that state of mind too?

10 MR. DUNNE: Sure.

11 JUDGE STIRMER: All right. It's received for
12 state of mind.

13 MR. SHOOK: Okay, Your Honor. Back again in
14 paragraph 3, the -- it's the la-- the second to the
15 last sentence, "The extra light was put on the tower
16 because the tower erector, who was supposed to be an
17 expert, said that we should..." through the end of that
18 sentence. Again, if that's offered for state of mind,
19 we have no objection. If it's offered for the truth of
20 the matter asserted, we have a hearsay objection.

21 JUDGE STIRMER: What, what -- it's offered
22 for the state of mind?

23 MR. DUNNE: Yes, Your Honor.

24 JUDGE STIRMER: All right.

25 MR. DUNNE: There was an extra, extra --

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1 JUDGE STIRMER: What was the --

2 MR. DUNNE: -- light on the tower and that's
3 why.

4 JUDGE STIRMER: Now, what, what is the
5 Bureau's position on this? Is this an extra light or
6 is it a light that was put there, and who -- another
7 light that should have been put there? What, what are
8 we arguing about?

9 MR. SHOOK: Your Honor, at this point, our,
10 our engineer had noted a problem in his report relative
11 to the way the tower lights were arranged on the KOKS
12 tower, and that's, that's a part of his report.

13 JUDGE STIRMER: They should have been at
14 certain locations and they were at other locations?

15 MR. SHOOK: His --

16 MR. DUNNE: Your Honor, there should, there
17 should have been -- the strict compliance with the,
18 with the construction from that would have been one on,
19 on the top and two on the side. This way, there's one
20 on the top and three on the side.

21 JUDGE STIRMER: But not at the same location
22 where the tower -- where the construction from it
23 indicated they should have been?

24 MR. DUNNE: No, there's a -- as far, as far
25 as I know, the only difference is there is one extra

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1 light.

2 JUDGE STIRMER: Is that right?

3 MR. DUNNE: Everything else is, is consistent
4 with the construction permit.

5 JUDGE STIRMER: Is that correct?

6 MR. SHOOK: Your Honor, that wasn't how I
7 read our engineer's report, but obviously Mr. Dunne has
8 a different reading than I do.

9 JUDGE STIRMER: It was my understanding that
10 the location of, of the light was not in the space
11 where it was supposed to be according to the construc-
12 tion permit?

13 MR. DUNNE: Yes, Your Honor. There was one
14 extra light. Okay. There were four lights instead of
15 three. As I read the report, and I -- you know, Mr.
16 Ramage is going to be --

17 JUDGE STIRMER: Well, are the three lights at
18 the locations where they were supposed to have been?

19 MR. DUNNE: My understanding is, Your Honor,
20 yes, they are, that the problem is that there are four
21 lights instead of three.

22 JUDGE STIRMER: Well, that's something that
23 you'all ought to look into before we start arguing
24 about it. That was my understanding, but, again, I'm
25 not as familiar with this as you all are.

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1 All right. Let's proceed.

2 MR. DUNNE: Excuse me, Your Honor. With the
3 -- can we go off the record just a moment to audit
4 these lights?

5 JUDGE STIRMER: All right.

6 (Off the record.)

7 (On the record.)

8 MR. DUNNE: Thank you, Your Honor.

9 MR. SHOOK: Your Honor, paragraph 4, page 3,
10 with the second sentence and the fourth sentence of
11 that paragraph, it's Mr. Stewart who answered the
12 telephone. This is Mrs. Stewart now who is testifying.
13 And we don't object to Mr. Stewart testifying about it,
14 but we do have a hearsay objection to Mrs. Stewart
15 testifying about the contents of the conversation.

16 MR. DUNNE: This is state of mind, Your
17 Honor. This is what she heard and it affected what --
18 how she treated Mrs. Smith -- dealt with Mrs. Smith.

19 JUDGE STIRMER: I'll accept it for the state
20 of mind.

21 MR. SHOOK: Okay. Your Honor, the second to
22 the last sentence in paragraph 4, beginning with, "One
23 of our board members, Carl Clanahan, called us to tell
24 us that he had received a few calls from people who
25 didn't give a name, complaining about the interference

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1 the radio station was causing to their tv reception."

2 Your Honor, we have a hearsay objection to this.

3 JUDGE STIRMER: You're objecting to that? Do
4 you have any -- what's your position?

5 MR. DUNNE: Your Honor, our position, it's,
6 again, it's state of mind. It shows that prior to the
7 time the station went on the air they had heard of
8 people complaining or objecting to the fact the station
9 was interfering with their tv sets when the station
10 wasn't even on the air.

11 JUDGE STIRMER: Oh, I'll overrule the objec-
12 tions. It's state of mind of the witness.

13 MR. SHOOK: Your Honor, our next, our next
14 objection is in paragraph 8 on page 6. It's in the
15 middle of the paragraph. The sentence reads, "We had
16 also been told by our consulting engineer, Kevin
17 Fisher, and our communications counsel that KOKS was
18 not responsible for curing interference to Channel 6,
19 Paduca, Kentucky." If that's being offered for state
20 of mind, then we have --

21 JUDGE STIRMER: I'll receive it for the state
22 of mind.

23 MR. DUNNE: I'm sorry. What paragraph are we
24 in? I --

25 JUDGE STIRMER: The middle of par-- of page

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1 6.

2 MR. DUNNE: Okay.

3 JUDGE STIRMER: All right. Proceed, Mr.

4 Shook.

5 MR. SHOOK: Yes, Your Honor. On page 9, Your
6 Honor, paragraph 11, it's in the middle of the para-
7 graph. "Kevin Fisher told us about the possibility of
8 using strength filters to reduce or eliminate the
9 interference." That's the objectionable clause. We
10 have a hearsay objection unless it's being offered to
11 establish state of mind.

12 JUDGE STIRMER: Where does that begin?

13 MR. SHOOK: It begins in the middle of the
14 paragraph, Your Honor. The first word of the sentence
15 is "Kevin."

16 JUDGE STIRMER: Kevin? All right.

17 MR. SHOOK: And it's that first clause.

18 JUDGE STIRMER: "Kevin Fisher told us about
19 the possibility of using strength filters to reduce or
20 eliminate the interference."?

21 MR. SHOOK: Yes, sir.

22 JUDGE STIRMER: All right. That'll be recei-
23 ved for the state of mind of the witness.

24 MR. SHOOK: Your Honor, on page 13, the last
25 three sentences of the paragraph, Your Honor, we have a

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1 competence objection relative to --

2 JUDGE STIRMER: Which, which paragraph?

3 MR. SHOOK: Paragraph 14.

4 JUDGE STIRMER: All right. The last three
5 sentences?

6 MR. SHOOK: Beginning with, "The only diffe-
7 rence is that..." down to the end of the paragraph. We
8 have a, a competence objection relative to this wit-
9 ness.

10 JUDGE STIRMER: Is Mrs. Stewart an engineer
11 or does she have any --

12 MR. DUNNE: No, Your Honor. She is not an
13 engineer, but she is a principal of the applicant.
14 She's someone who worked with the antenna manufacturer
15 and dealt with the people who were putting up the
16 antenna.

17 JUDGE STIRMER: I'll permit it to stand as
18 her understanding without accepting it for the truth of
19 the matter.

20 MR. SHOOK: Your Honor, I missed one earlier.
21 Going back to page 6, it's three lines up from the
22 bottom, the clause, "and she did not tell me that I was
23 wrong." Now, again, this is one of these that if it's
24 offered for state of mind --

25 JUDGE STIRMER: It's the state of mind. It's

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1 not for the truth of the matter.

2 MR. SHOOK: Your Honor, in paragraph 15, the
3 part we're concerned with begins on the fourth line of
4 page 14 with "Mr. Poole also told us that we shouldn't
5 worry." Going to the end of that paragraph, we have a
6 hearsay objection to those sentences.

7 MR. DUNNE: Jim, I'm sorry. Where are you?
8 Paragraph 15?

9 MR. SHOOK: Okay. It's paragraph 15. The
10 part that we're concerned with is on page 14. Page 13
11 is fine. Page 14, fourth line, beginning with "Mr.
12 Poole."

13 MR. DUNNE: Okay. Your Honor, that's a state
14 of mind statement. That's not for the truth of the
15 matter.

16 JUDGE STIRMER: I, I'm going to strike one,
17 I'm going to strike one phrase in there and receive the
18 rest for the state of mind. The phrase that I'm stri-
19 king is, "Mrs. Raines seemed satisfied with what she
20 saw and..."

21 So, the sentence would read, "The station did
22 not receive any citations."

23 All right, Mr. Shook, continue, please.

24 MR. SHOOK: Yes, Your Honor. Your Honor, on
25 page 16, it's paragraph 17. It's the, the -- beginning

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1 on the fourth line down, "and took care of any interfe-
2 rence caused by the station." Your Honor, we, we
3 object on the grounds that that's a legal conclusion,
4 also an engineering conclusion, that this witness is
5 not, not competent to testify about.

6 JUDGE STIRMER: That's the witnesses
7 testimony. I'll overrule the objection. She can be
8 cross-examined on that to what, what she did to take
9 care of the interference --

10 MR. SHOOK: Your Honor, just for the --

11 JUDGE STIRMER: -- and whether she was suc-
12 cessful in taking care of it.

13 MR. SHOOK: Yes, Your Honor. Just for the
14 record, we also have the same objection to the last
15 sentence in that paragraph, but we understand Your
16 Honor's ruling.

17 JUDGE STIRMER: That's the witnesses testi-
18 mony. Overruled.

19 MR. SHOOK: Your Honor, paragraph 22 on page
20 19. It's about halfway to 60 percent in to the para-
21 graph. It begins with the sentence, "The Hillises said
22 that it was from the highway patrol, which is located
23 right across the street." Your Honor, we have an
24 objection to that on the grounds of hearsay because it
25 appears to us that it's being offered to -- for the

1 proof -- the truth of the matter asserted.

2 JUDGE STIRMER: Well, that, that is -- what,
3 what is it offered for, Mr. Dunne, the state of mind?

4 MR. DUNNE: Excuse me, Your Honor?

5 JUDGE STIRMER: That sentence, is that of-
6 fered for the state of mind of the witness?

7 MR. DUNNE: No. That's offered for the truth
8 of the matter asserted. They're right across from the,
9 from the highway patrol.

10 JUDGE STIRMER: Well --

11 MR. DUNNE: It's easily observable. Everyone
12 can be cross-examined on it, and that's what they said
13 the interference was coming from.

14 JUDGE STIRMER: Will the Hillises be witnes-
15 ses?

16 MR. SHOOK: Mrs. Hillis --

17 MR. DUNNE: Mrs. Hillis is a witness, Your
18 Honor.

19 JUDGE STIRMER: All right. Well, I'll let
20 you cross-examine her or ask her about that. You can
21 cross-examine this witness as to whether or not she
22 said that.

23 MR. SHOOK: Okay, Your Honor. I missed one.
24 It's on paragraph 20, page 17, beginning five lines up
25 from the bottom. "There was no FM blanketing interfe-

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1 rence on any channel."

2 JUDGE STIRMER: What, what page are we on?

3 MR. SHOOK: This is on page 17, Your Honor.

4 JUDGE STIRMER: We're going back now?

5 MR. SHOOK: Your Honor, I missed that one.

6 JUDGE STIRMER: Oh, okay.

7 MR. SHOOK: It's that one sentence, "There
8 was no FM blanketing inference on any channel that we
9 looked at."

10 JUDGE STIRMER: Oh, you want to testify to
11 that, Mr. -- not testify, but tell me why that should
12 be permitted to remain? I mean, this witness has no
13 technical expertise.

14 MR. DUNNE: Your Honor, once again, blanket-
15 ing interference, as Mr. Lampe testified, is distinc-
16 tive. It either blanks out a channel or there's a --

17 JUDGE STIRMER: All right.

18 MR. DUNNE: -- herring bone pattern on the
19 channel.

20 JUDGE STIRMER: I'm going to strike that,
21 because this witness has not demonstrated any ability
22 to, to -- any ability or expertise to, to testify for
23 that.

24 MR. DUNNE: Your Honor, if, if blanketing
25 interference is something that is observable on a tv

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1 set in a distinctive way --

2 JUDGE STIRMER: She has not demonstrated any
3 ability, any expertise, any technical knowledge to draw
4 that conclusion, Mr. Dunne. Now, I can't walk into a,
5 a house, observe a television reception, and come to a
6 conclusion --

7 MR. DUNNE: Yes, Your Honor, but --

8 JUDGE STIRMER: -- that this is blanketing or
9 it's not blanketing when I don't know any about --

10 MR. DUNNE: When you receive --

11 JUDGE STIRMER: -- what causes blanketing.

12 MR. DUNNE: When you receive information from
13 the FCC that says blanketing interference does certain
14 things, it blanks out channels or it looks like a
15 herring bone pattern, and you go to houses and observe
16 so many sets that have blanketing interference and
17 don't have blanketing interference, you can form an
18 opinion as to what's blanketing interference or not.

19 JUDGE STIRMER: Well, how many homes did she
20 find that had blanketing problems?

21 MR. DUNNE: Quite a few, Your Honor, I think
22 is, is fair to say. I mean, that there -- she's testi-
23 fying specifically that this one didn't when she left.

24 JUDGE STIRMER: Well, I'm not going to permit
25 her to testify to it. I mean, there are other witnes-

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1 ses who are -- have some engineering expertise who can
2 testify as to what --

3 MR. SHOOK: Your Honor, page 19, this is at
4 the bottom of the page, the clause that reads, "and
5 there was no evidence in the picture that I saw of any
6 FM blanketing interference." The same objection we had
7 to the last sentence, Your Honor, that was discussed.

8 Oh, and Your Honor, also three lines above
9 that --

10 JUDGE STIRMER: Well, I'm going to permit
11 that to stand. You can cross-examine her on her know-
12 ledge of what blanketing interference is. She said
13 there was no evidence of it. You can ask her what she
14 saw.

15 MR. SHOOK: Okay. Your Honor, essentially
16 the same objection to the clause -- or not a clause,
17 it's in parentheses about three lines above that. It
18 reads, "but no FM blanketing interference."

19 JUDGE STIRMER: You can ask her what she
20 means by that.

21 MR. SHOOK: Your Honor, on page 20, paragraph
22 23, the third line --

23 JUDGE STIRMER: Will we have some -- let me
24 ask you this. Will we have some testimony from a
25 Commission engineer as to what blanketing looks like on

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1 a television screen or what --

2 MR. SHOOK: Well, Your Honor, the thrust, the
3 thrust of Mr. Ramage's report is that he observed
4 certain things which he describes more or less in his
5 report when KOKS was on the air and he observed diffe-
6 rent things when --

7 JUDGE STIRMER: When they went --

8 MR. SHOOK: -- KOKS was off the air.

9 JUDGE STIRMER: All right. And he, he attri-
10 butes the difference to blanketing?

11 MR. SHOOK: Yes, sir.

12 JUDGE STIRMER: All right. Continue, please.

13 MR. SHOOK: Your Honor, on page 20, paragraph
14 23, the third line down, the clause, "since we don't
15 have to cure Channel 6 problems." Your Honor, that
16 conflicts with the law of the case. Now, if this is
17 supposed to --

18 JUDGE STIRMER: That's her state of mind.

19 MR. DUNNE: Yes, Your Honor. That's not
20 offered for the proof of the matter.

21 MR. SHOOK: Your Honor, just to clarify then,
22 on paragraph 24, I take it again it's -- the clause, it
23 would be -- one, two, three, four, five -- beginning
24 six lines down, "which is not a local signal and which
25 we didn't have to protect from interference." I, I

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1 take it that's being offered for state of mind?

2 JUDGE STIRMER: That's the state of mind of
3 the witness. That, that was her understanding.

4 MR. DUNNE: That's correct, Your Honor.

5 JUDGE STIRMER: You can develop where she got
6 that understanding.

7 MR. SHOOK: Your Honor, on page 21, the
8 paragraph 25, halfway into the paragraph, just to
9 clarify, the, the clause, "she was supposed to get
10 well." I, I take it that's being offered for state of
11 mind?

12 MR. DUNNE: Yes.

13 MR. SHOOK: At that -- we would have no
14 objection, then, if that's what it's offered for.

15 JUDGE STIRMER: Very well.

16 MR. SHOOK: And then the last, the last
17 clause in paragraph 25, we have a competence objection.

18 JUDGE STIRMER: Well, that's her opinion.
19 You can cross-examine her on what she viewed.

20 MR. SHOOK: And moving to page 27, paragraph
21 34, we recognize from your earlier rulings, Your Honor,
22 what's likely to happen here, but we do have two compe-
23 tence objections to the clause that begins the fourth
24 line up, "but there was no FM blanketing interference
25 on any channel." And we have a similar competence

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1 objection to the clause, the second clause in the next
2 sentence that reads, "and there was no FM blanketing
3 interference on the channel."

4 JUDGE STIRMER: Well, let, let me say this.
5 You can cross-examine Mrs. Stewart. And based upon her
6 testimony, I'm going to either credit this testimony or
7 I'm going to reject it as being incompetent and unwor-
8 thy of belief. But without hearing from her and, and
9 having some understanding of whether she has some
10 ability to distinguish a blanketing problem from some
11 other problem, I'm not in a position now to rule that
12 she can't testify to this.

13 MR. SHOOK: Your Honor, we have a hearsay
14 objection with respect to the last two sentences of
15 paragraph 35 which appear on page 28. Just for Your
16 Honor's information, Mrs. Durbin -- or Ms. Durbin,
17 rather, is one of our witnesses.

18 JUDGE STIRMER: All right. Then she can
19 testify to that. I'll, I'll overrule the objection.
20 You, you can ask Mrs. Durbin whether she said that.

21 MR. SHOOK: Thank you, Your Honor. Your
22 Honor, we have no further objections to Calvary Exhibit
23 3.

24 JUDGE STIRMER: All right. With those ru-
25 lings, Calvary Exhibit 3, or KOKS Exhibit 3, whichever

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1 | you want to call them, is received. It can be known by
2 | either designation.

3 | (Whereupon, the document
4 | marked for identification as
5 | KOKS Exhibit No. 3 was
6 | received into evidence.)

7 | MR. SHOOK: Your Honor, I -- since I came in
8 | late, are we treating these as -- I mean, denominating
9 | them as KOKS exhibit? Just so I'm consistent with
10 | everybody else.

11 | JUDGE STIRMER: Yeah. Well, but we'll under-
12 | stand that it can either be referred to either way.
13 | We'll understand that they're KOKS exhibits.

14 | MR. DUNNE: Well, Your Honor, KOKS would,
15 | would like to exhibit -- excuse me -- move for the
16 | admission of Exhibit No. 4, the testimony of Joseph
17 | Harrison.

18 | JUDGE STIRMER: Are there any objections?

19 | MR. SHOOK: None.

20 | JUDGE STIRMER: All right. KOKS Exhibit 4 is
21 | received.

22 | (Whereupon, the document
23 | marked for identification as
24 | KOKS Exhibit No. 4 was
25 | received into evidence.)

1 MR. DUNNE: KOKS would like to offer into
2 evidence Exhibit No. 5, the report Clark Poole.

3 JUDGE STIRMER: Are there any objections?

4 MR. SHOOK: Yes, Your Honor. We object to
5 this exhibit in its entirety. It's unsponsored. And
6 we also have -- so, in other words, there's, there's a
7 hearsay objection. And we also have an objection
8 because the report, in our view, does not demonstrate
9 the -- is, is not probative in the sense that there is
10 insufficient information in there to make a determina-
11 tion that anything that KOKS is doing is causing blan-
12 keting interference. It just -- it doesn't have suffi-
13 cient information to come to a conclusion one way or
14 the other. But our, our first objection is a hearsay
15 objection because it's unsponsored.

16 JUDGE STIRMER: What do you mean by it's
17 unsponsored?

18 MR. SHOOK: Well, Your Honor, there is no
19 affidavit from Mr. Poole.

20 JUDGE STIRMER: That's not under oath.

21 MR. SHOOK: The report itself is not, Your
22 Honor.

23 JUDGE STIRMER: Mr. Dunne, do you want to
24 respond to that?

25 MR. DUNNE: Yes, Your Honor. It's a report

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1 prepared in the regular course of business by an employ-
2 yee of the U. S. Government. I think there's a hearsay
3 exception that deals with business records that covers
4 this. It certainly does contain relevant and important
5 information concerning the case. For example, there
6 was no evidence of blanketing, or at least he couldn't
7 find some, on June 5, 1989, and there are certain other
8 things here that are, I think, are necessary to the
9 record. For example, the meter readings that he took
10 concerning the signal strength of the tv stations noted
11 on page 2, and certain other, other factors.

12 MR. SHOOK: Your Honor, if I may speak to
13 that. The report itself reflects that the meter read-
14 ings were taken at five widely scattered locations in
15 the Poplar Bluff area, but gives us no indication of,
16 you know, what Mr. Poole might have considered to have
17 been a widely scattered location. We have no clue
18 where he took these meter readings.

19 JUDGE STIRMER: For what purpose do you want
20 me to receive this for, Mr. Dunne?

21 MR. DUNNE: Pardon?

22 JUDGE STIRMER: What -- for what purpose is
23 this being offered?

24 MR. DUNNE: For the matters asserted therein.

25 JUDGE STIRMER: Well, specifically, that --

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1 MR. DUNNE: For example, the --

2 JUDGE STIRMER: -- KOKO-- KOKS background
3 audio is being heard on Channel 6, Channel 8, Channel
4 12, and Channel 15?

5 MR. DUNNE: Right. And the signal strength
6 readings that are noted on page 2.

7 JUDGE STIRMER: And that they -- and also --

8 MR. DUNNE: The --

9 JUDGE STIRMER: The last, the last paragraph?
10 Do you want me to receive that for the truth of the
11 matters, "The main problem with KOKS is that they exist
12 close to complainants who have received substandard
13 television signals with good results for many years."?

14 MR. DUNNE: Your Honor, I would also point
15 out that paragraph 5 on page 2, "The Smiths and Hil-
16 lises were advised that the Commission could not re-
17 quire correction of blanketing problems for signals
18 which did not make the grade B contour. Only local
19 stations are protected." Again, this goes back to the
20 state of mind of Mr. and Mrs. Stewart and KOKS concern-
21 ing what was reasonable as far as their, their correc-
22 tion. I'm referring to the -- one, two, three -- fifth
23 paragraph down on page 2, paragraph beginning, "In
24 contrast, the KOKS signal..." The last paragraph, the
25 sen-- last sentence, "The Smiths and Hillises were

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1 | advised that the Commission could not require correc-
2 | tion."

3 | Now, again, Your Honor, we understand the law
4 | of the case as it is now set, but in 1989 certain
5 | people, including the Stewarts, had an understanding of
6 | what the Commission required of them, and that's --
7 | understanding was also shared by certain other people,
8 | including an FCC engineer.

9 | JUDGE STIRMER: What do you say to that, Mr.
10 | Shook?

11 | MR. SHOOK: Well, Your Honor, first of all,
12 | there's no indication in this report that that informa-
13 | tion -- I mean, I, I don't see the connection between
14 | Mr. Poole and the Stewarts at this stage.

15 | MR. DUNNE: Your Honor, the Stewarts are, are
16 | -- have a misrepresentation issue. Among the issues is
17 | whether the beliefs they had concerning what the FCC
18 | required of them were reasonable or not.

19 | JUDGE STIRMER: Well, that's not the only
20 | question. The question is whether or not they correc-
21 | ted the problems that existed --

22 | MR. DUNNE: That's correct, Your Honor.

23 | JUDGE STIRMER: -- as they represented they
24 | did.

25 | MR. DUNNE: Well, Your Honor, I think the

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1 | testimony of Mrs. Stewart makes clear in certain repre-
2 | sentations, she said we corrected the problems that we
3 | thought we were supposed to correct, but not Channel 6
4 | because we didn't think we had to correct Channel 6.

5 | JUDGE STIRMER: Well --

6 | MR. DUNNE: I mean, that's a significant
7 | difference.

8 | JUDGE STIRMER: That's something which you
9 | all can develop on this record. Let me reserve ruling
10 | on this. I want to have a chance to read the report
11 | before I rule on it. I'll rule on it later today.

12 | MR. DUNNE: Your Honor, I note that Mrs. --
13 | again, Mrs. Smith and Mrs. Hillis are going to be, are
14 | going to be witnesses in this case and there is docu-
15 | mentary evidence in the terms of the broad sides that
16 | they, that they distributed in the community that they
17 | actually told other people that Channel 6 was not a
18 | local, local channel. We intend to bring out in --

19 | JUDGE STIRMER: I understand.

20 | MR. DUNNE: -- cross-examination.

21 | JUDGE STIRMER: I mean, this, this report
22 | contains some relevant information that's damaging to
23 | the station and it's possibly not -- and complete there
24 | aligned with, with the Bureau theory of the case. I
25 | don't know. I haven't examined it in any great detail.

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1 All right. Proceed, please.

2 MR. DUNNE: Your Honor, may I have a moment,
3 Your Honor?

4 JUDGE STIRMER: Sure.

5 (Off the record.)

6 (On the record.)

7 MR. DUNNE: KOKS would offer Exhibit No. 6
8 into evidence.

9 JUDGE STIRMER: Are there any objections?

10 MR. SHOOK: Yes, Your Honor. We have a
11 hearsay objection to Exhibit 6. It is unsponsored and
12 the report itself is not submitted under penalty of
13 perjury.

14 JUDGE STIRMER: Mr. Dunne, do you want to
15 respond?

16 MR. DUNNE: Your Honor, I would respond the
17 same way as I did with respect to the objections for
18 Exhibit 5. It's a business record, can be received
19 under that, that --

20 JUDGE STIRMER: This is --

21 MR. DUNNE: -- under that exception.

22 JUDGE STIRMER: This is a Commission report
23 now.

24 MR. DUNNE: I, I presume the Commission
25 stands by the accuracy of the, you know --

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